**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 5933 OF 2005**

Anil Laxman Chauhan. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri Manohar N.Rajput for the Applicant.

Ms.S.D.Shinde, A.P.P. for the Respondent.

**CORAM : ABHAY S. OKA, J.**

**DATED : 4th October, 2005.**

**P.C.:**

1. Submissions of the learned Counsel appearing for the parties have been heard yesterday. The offences alleged against the Applicant and co-accused are under sections 395, 397, 457, 380, 511 of the Indian Penal Code. The learned Advocate for the Applicant submitted that the identification parade is defective and apart from the fact that it is belatedly held, it is contrary to law. He pointed out that the witness who allegedly identified the Applicant in the identification parade was called at the Police Station and the Applicant was shown to him. He submitted that if the evidence regarding identification parade becomes doubtful, the Applicant is entitled to be enlarged on bail.

2. The learned A.P.P. produced necessary material collected during the investigation and pointed out that the villagers caught all the accused and there is

recovery of silver anklets from the possession of the Applicant. The learned A.P.P. stated that the Applicant has made out a case that he is residing with his father Laxman Hirappa Chavan. However, on verification, it was found that the ration card at the said address is in the name of the mother of the Applicant and the ration card does not contain the name of the Applicant. The learned A.P.P. submitted that the Applicant has no permanent place of abode and there is every possibility that he will abscond.

3. I have considered the submissions. The Applicant was arrested on 11th March 2005. The test identification parade was held on 5th April 2005 wherein it is stated that the first informant identified the Applicant. It must be noted here that memorandum of test identification parade is in a printed format and some of the details are filled in handwriting. In one of the material paragraphs on page 2 of the Memorandum, certain portion is erased and no one has countersigned the erased portion. There is material on record to show that the first informant had earlier visited the concerned Police Station. The said fact appears to be borne out from the statement of the husband of the first informant recorded on 12th March 2005. In the said statement, the husband of the first informant has stated that the accused persons were shown to him and he identified them. In the said statement, he has stated

that the articles allegedly recovered from the Applicant and co-accused were shown to the first informant who identified the same. He specifically stated that his wife i.e. the first informant accompanied him to the Police Station. The test identification parade is held three month after the said visit to the Police Station.

4. The learned Sessions Judge has relied upon the test identification parade while rejecting the Application made by the Applicant. The learned Sessions Judge has, however, not noticed the prima-facie irregularities in the test identification parade. The test identification parade may not be bad only on the ground that the memorandum is in a printed format. However, in the present case while erasing material words and adding the words, the same should have been atleast initialled by the Executive Magistrate. From a xerox copy of Memorandum it appears that page No.2 is neither signed nor initialled and there is no seal/stamp affixed on the said page. Taking an over all view of the matter, a case is made out for enlarging the Applicant on bail subject to stringent conditions. There is an affidavit filed by the father of the Applicant on record disclosing the address where the Applicant proposes to stay after he is enlarged on bail. The said address is a Hut near Gate No.6 P.D.Mello Road, Wadi Bunder, Mumbai 400 009.

5. Hence the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.22 of 2005 registered at Roha Police Station, subject to furnishing a personal bond of Rs.15,000/- with one or two local sureties.

(ii) The bail is granted to the Applicant subject to condition that the Applicant will report to the concerned Police Station having jurisdiction over the area in which the Applicant will be residing i.e. at a Hut near Gate No.6 P.D.Mello Road, Wadi Bunder, Mumbai 400 009, once in a week till conclusion of trial.

(iii) The bail is granted subject to further condition that the Applicant will not change his place of residence till conclusion of trial without giving prior intimation to the Investigating officer.

(iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall

not in any manner tamper with prosecution evidence.

(v) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

(viii) The parties to act upon an authenticated copy of this order.

**Judge.**